

Introduction

(current through December 1, 2009)

The Pattern Criminal Jury Instruction Committee of the Sixth Circuit District Judges Association includes district judges, prosecutors, defense attorneys and academics from around the circuit. The members are listed above. The Committee became a standing Committee on April 10, 2003.

The instructions are designed for use at the end of trial. However, this should not be interpreted as a recommendation against using preliminary instructions before the trial begins. To the contrary, the Committee believes that preliminary instructions are helpful. With modifications, these instructions can be used as preliminary instructions. A full set of preliminary instructions appears in § 2.07 of the Benchbook for United States District Judges.

The research includes cases released through December 1, 2009.

The Committee uses simple language, or plain English, whenever possible.

In the text of the instructions, the Committee uses brackets to indicate language that is only appropriate in limited circumstances, and to indicate alternatives. Use Notes following the instructions briefly explain when bracketed language should be used. The Use Notes also highlight other issues relating to the instructions.

A committee commentary is provided with each instruction. The commentaries cite the authority for the instruction and explain the Committee's rationale.

In the commentaries, the Committee occasionally cites unpublished cases. These are widely available now in the electronic databases, Lexis and Westlaw, and in West's publication, the Federal Appendix. The Committee uses unpublished cases only when there is no published case on point or where the unpublished case is helpful. Sixth Circuit Rule 28(g) governs the citation of unpublished decisions by counsel in briefs and oral arguments in the Sixth Circuit and in the district courts. See also Fed.R.App.P. 32.1. Unpublished decisions are not precedentially binding under the doctrine of stare decisis, but they may be of persuasive value. *United States v. Villareal*, 491 F.3d 605, 610 (6th Cir. 2007); *United States v. Sanford*, 476 F.3d 391, 396 (6th Cir. 2007).

The instruction include an appendix, which provides some charts diagramming a money laundering crime.

As the Judicial Council indicates in its resolution authorizing the distribution of these instructions, approval of the content of the instructions must await a case-by-case review by the Court of Appeals. Each case is different, and no set of pattern instructions can cover all the variables which may arise. These are suggested instructions only, and should be tailored to fit the facts of each individual case. As the Sixth Circuit has cautioned, although pattern instructions "have their place, they should not be used without careful consideration being given to their applicability to the facts and theories of the specific case being tried." *United States v.*

Wolak, 923 F.2d 1193, 1198 (6th Cir. 1991).

The instructions continue to use singular pronouns and verbs and to use masculine pronouns only where the use of gender-neutral language was awkward or lacked specificity. The instructions should be modified to fit the case, including using female pronouns where appropriate. Some courts give a preliminary instruction on this issue, for example:

Any reference to he, his and him within these jury instructions should be construed by you as having equal applicability to any female participant in this trial. The use of the masculine pronouns is only for convenience in reading the instructions and not for the purpose of giving emphasis to, or providing focus upon, any witness or particular aspect of this case.